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November 30, 2015

Robert Howatt  
Executive Director  
Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, DE 19904

**Re: In The Matter of the Application of Tidewater Utilities, Inc., for  
Approval Pursuant to 26 Del. C. § 215 of the Issuance of a Long-Term  
Debt Obligation**

Dear Mr. Howatt:

Richards, Layton & Finger, P.A. is Delaware counsel for Tidewater Utilities, Inc. ("Tidewater") in connection with its Application (the "Application") for approval by the Delaware Public Service Commission (the "Commission") of the issuance of a long-term debt obligation in the principal amount of \$1.2 million, with a fixed interest rate, from the Delaware Drinking Water State Revolving Loan Fund (the "SRF Loan"). This letter summarizes certain aspects of Delaware law with respect to Tidewater's Application before the Commission. For purposes of this letter, we have reviewed only the Application and have not reviewed any other documents. We have conducted no independent factual investigation of our own but rather have relied solely upon the Application, the statements and information set forth therein and the additional matters recited or assumed herein, all of which we have assumed to be true, complete and accurate in all material respects. Our review of the aforementioned documents has been limited to a review of issues arising under Delaware state law applicable to regulated utilities governed under Title 26 of the Delaware Code. This letter does not constitute the opinion of the undersigned or the firm on any matter discussed or referenced herein or on the legality, validity and enforceability of any documents related to the financing of the SRF Loan. As identified in the Application (Exhibit C contains the proposed Opinion of Counsel), our firm will issue a formal opinion regarding the financing transaction at closing, which will be filed with the Commission.

Tidewater's application is submitted pursuant to 26 Del. C. § 215. Section 215(a) of Title 26 establishes, *inter alia*, that "[n]o public utility, without having first obtained the approval of the Commission, shall: (2) Issue any stocks, stock certificates, or notes, bonds or other evidences of indebtedness payable in more than 1 year from the date thereof; or (3) Assume any obligation or liability as guarantor, endorser, surety or otherwise in respect of any security of



any other person or corporation, payable or maturing more than 1 year after the date of such issue or assumption of liability.” This section generally states that “[t]he Commission shall approve any such proposed merger, mortgage, transfer, issue, assumption or acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest.” 26 Del. C. § 215(d). Section 215(e) further sets forth that a public utility may satisfy the requirements of Section 215(a)(2) and (3) by filing with the Commission a statement of a financing plan, stating in detail: (a) those issuances or assumptions that it intends to make within 3 years following the filing; (b) the anticipated times thereof; (c) the anticipated costs thereof; (d) the anticipated capitalization ratios for the public utility during that period; and (e) such other information as the Commission may require. *Id.* § 215(e)(1). The Commission is to review the plan for consistency with efficient and reasonable financing principles and approve any financing plan when the proposed financings are to be made in accordance with law, for proper purposes and are consistent with the public interest. *Id.* § 215(e)(2).

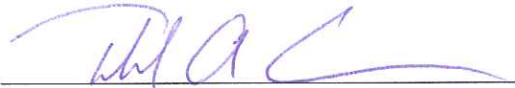
26 Del. C. § 215 sets forth the required, but limited, findings to be made by the Commission in its consideration of Tidewater’s proposed issuance of a long-term obligation. In addition, in *Diamond State Telephone Co. v. Public Service Commission*, 367 A.2d 644 (Del. 1976), the Delaware Supreme Court addressed the scope of review for the Commission in reviewing the business judgment of a utility’s board of directors. The Delaware Supreme Court stated that “the Commission may not do indirectly what it may not do directly, namely, in the absence of a showing of improper consideration, fraud, bad faith or self dealing on the part of the members of [utility’s] board of directors in their decision to issue shares of stock for the ostensible purpose of raising needed moneys to substitute its judgment for that of a board of directors for the avowed purpose of forestalling a future potential threat in a rate case of higher rates being imposed on the public as the result of a possible future restriction in the use of hypothetical capital structures. We say this because it has been decided by this Court that the Commission may not seek to control rates indirectly by seeking to control the fiscal policies of a public utility.”

The Application sets forth a statement of a financing plan, stating in detail: (a) those issuances or assumptions that it intends to make within 3 years following the filing; (b) the anticipated times thereof; (c) the anticipated costs thereof; (d) the anticipated capitalization ratios for the public utility during that period; and (e) such other information as the Commission has or may require under Section 215(a)(2) of Title 26. Specifically the Application provides that: (a) Tidewater will enter into a long-term debt obligation to the Delaware Drinking Water State Revolving Fund (by and through the Delaware Department of Health and Social Services) in order to finance capital improvements to the Tidewater’s water system; (b) the SRF Loan will be in the principal amount of up to \$1,200,000 and will carry a fixed annual interest rate of 2.0%; (c) the SRF Loan will have a maximum term of 20 years with (i) semi-annual interest only payments during project construction and (ii) principal and interest payments sufficient to amortize the loan over 20 years after project completion; and (d) the anticipated capitalization ratios for Tidewater after the issuance of the SRF Loan are set forth on Schedule No. 1 to the Application.

Additionally, the Application indicates that the SRF Loan monies will be used for the public interest by funding the replacement of the existing water distribution system and the installation of a fire system at the Camelot Mobile Home Park located in Rehoboth Beach, Delaware pursuant to an order issued by the local Fire Marshall. Tidewater also states in the Application that it will continue to upgrade and strengthen its existing systems for water quality and fire protection as well as replace older section of its distribution system. In this regard, Tidewater has indicated in the Application that the SRF Loan satisfies Tidewater's financing goal of long-term maturity and favorable interest rates.

Further, as reflected in the attached Unanimous Consent of the Directors of Tidewater and the signed Commitment Letter, Tidewater's Board of Directors has adopted resolutions reflecting that Tidewater may obtain the SRF Loan and it has done so in the amount of \$1,200,000.

In light of the foregoing, the Application contains the limited statutory information required by 26 Del. C. § 215 and to the standards of Delaware Supreme Court's holding in *Diamond State Telephone Co. v. Public Service Commission*, 367 A.2d 644 (Del. 1976).



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